IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :05.07.2007

C O R A M :

THE HONOURABLE MR.A.P.SHAH, THE CHIEF JUSTICE
AND
THE HONOURABLE MR.JUSTICE P.JYOTHIMANI

W.A.No. 862 of 2007
and M.P.No.1 of 2007

B. Ramesh Babu HC 2378
(Under suspension)
Tamil Nadu Special Police III Btln.
Veeraopuram
Chennai 53. ... Appellant

-vs-

The Commandant
Tamil Nadu Special Police III Btln.
Veerapuram, Chennai 53. ... Respondent

Writ Appeal filed under Clause 15 of Letters Patent against the order of the learned single Judge dated 26.03.2007 made in W.P.No.25205 of 2006 The Writ Petition presented to this Court under Article 226 of Constitution of India to issue a Writ of ceertiorari Mandamus to calling for the records pertaining to the show cause Notice NOC.NO.242/G3/2006 dated 18.7.2006 in Na.Ka.No.AA4/tha/Pa/17/2005 passed by the respondent herein and the charge in the Pa.No.17/2005 dated 1.9.2005 issued by the respondent herein and quash the same.

For appellant :: Mr. R. Sampathkumar

For respondent .. Mr. Raja Kalifulla
Government Pleader

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JUDGMENT

(DELIVERED BY P.JYOTHIMANI,J.)

This writ appeal is directed against the order of the learned single Judge dated 26.03.2007 passed in W.P.No.25205 of 2006, by which the learned Judge while dismissing the writ petition filed by the appellant, has held that the impugned show cause notice issued by the respondent dated 17.07.2005 enclosing the enquiry report, directing the appellant to give his explanation cannot be interfered regarding the merits and demerits of the findings of the Enquiry Officer.

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2. It is seen on the facts of the case that as against the appellant while working as Head Constable TSP III Battalion by placing him under suspension, a charge memo was issued on 19.08.2005, which is relating to the leakage of the question papers in respect of the examinations conducted for Grade-II Constable Selection (Men and Women) for the year 2003-2004 and also receiving illegally an amount of Rs.1,30,000/- for the same. The charges framed against the appellant are as follows:

"Charge

Charge 1: You the Havildar, 2378 Rameshbabu has committed a condemnable offence of receiving illegally the general knowledge and psychology question paper the examination Gr.-II constable selection (Men and Women) for the year 2003-04 conducted by the Tamil Nadu Uniformed Services Recruitment Board and taking the same before the examination conducted on 27.03.2005.

Charge 2: Committed a condemnable offence illegally receiving the question paper of general knowledge with answers during examination for Gr.-II constable selection (Men and Women) for the year 2003-2004 conducted by Tamil Nadu Uniformed Services Recruitment Board on 01.06.2005 and leaking the same before the examination.

Charge 3: Committed a condemnable act of receiving question papers illegally for the examination for selection of Gr.II Constable held on 27.03.2005 and 01.06.2005 conducted by the Tamil Nadu Uniformed Services Recruitment Board and receiving illegally an amount of Rs.1,30,000/- (Rupees one lakh thirty thousand only) from 2848 Head Constable Sekar working in Chennai, Madhavaram Police Station and acted in a preplanned manner in handing over the same to constable 1508 Arul serving in Chennai Commando forces as bribe.

Charge 4: Committed condemnable act of receiving a huge amount as bribe and acted in favour of candidates for the test through Security personnel by misusing his official authority in the operations of the above Recruitment Board in Gr.II Constables (Male and Female) for the year 2003-2004 conducted by Tamil Nadu Uniformed Services Recruitment Board held on 27.03.2005 and 01.06.2005."

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3. After appointment of an Enquiry Officer, enquiry was conducted and after supplying documents to the appellant, witnesses were examined, in which the appellant has participated and Enquiry Officer submitted his final report. It is, after the enquiry was completed, the impugned show cause notice enclosing the enquiry report, was issued and at that stage, challenging the said show cause notice, the present writ petition came to be filed.

4. The learned counsel appearing for the appellant has raised an issue that in respect of the same charges on which disciplinary proceedings has been initiated against the appellant, criminal complaint has been given and in fact, First Information Report has been filed on 08.12.2005, charging the appellant under Sections 120 (b), 457, 380, 166, 409 IPC and under Section 13 (1)(c)&(d) of the Prevention and Corruption Act, 1988 and the said criminal complaint was given against 87 Police Officers, in which the appellant is one among them. Therefore, according to the learned counsel, since the criminal case and the departmental proceedings are on the same set of facts, the disciplinary proceedings must be postponed or stayed till the disposal of the criminal proceedings, since according to him, any disclosure of defence by the appellant in the departmental proceedings will affect his defence in the criminal case.

5. To substantiate his contention, the learned counsel would rely upon the judgement of the Division Bench rendered in Indian Overseas Bank vs. P. Ganesan (2006 (1) CTC 689). That was a case of dispute between two rival Associations, in the name of Indian Overseas Bank Scheduled Caste/Scheduled Tribe Employees' Welfare Association and the subsequent Association called All India Overseas Bank Schedule Caste and Schedule Tribe Employees' Welfare Association floated by one Mr.A.Krishnan, who was an Office bearer of the previous Association. There was a physical assault on the office bearers of the writ petitioner Association by one Mr.L.Balasubramaniam, President of All India Overseas Bank Employees' Association and the writ petitioner Association's office bearers were hospitalised. The said Mr.L.Balasubramaniam, having attacked the writ petitioner Association's office bearers, had lodged a private complaint and there was also a counter complaint against L.Balasubramaniam under Sections 341 and 323 IPC read with Section 3(1) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and the same was registered in Crime No.163 of 2005 and charge sheet was also filed before the XIV Metropolitan Magistrate, Egmore, Chennai. Likewise, the complaint made by L.Balasubramaniam was registered in Crime No.162 of 2005 under Sections 341, 323, 324, 427, 307 and 507 (II) IPC and a charge sheet was also filed in the same Court. The Indian Overseas Bank has initiated disciplinary proceedings against the office bearers of the writ petitioner Association and issued a charge memo on the basis that the petitioners had indulged in unruly, riotous behaviour and allegedly committed wilful act of criminal

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assault on Mr. L.Balasubramaniam and a domestic enquiry was proceeded with. It is seen that in that case the statement of imputation was solely based on the criminal complaint lodged by Mr. L. Balasubramaniam. It was, considering the said peculiar facts and circumstances of the case, the Division Bench in the above said case, has directed the deferring of departmental proceedings till conclusion of the criminal trial in the following operative words.

> "15. In our opinion, in the peculiar facts and circumstances of the case on hand, fair play requires the postponing of the departmental proceedings till the criminal cases are decided. We are, therefore, of the view that the prayer made by the petitioners for deferring the departmental proceedings till the conclusion of the criminal trial has to be accepted and it is ordered accordingly."

On the face of it, it is clear that the judgement rendered in the above said case by the Division Bench is on the peculiar facts and circumstances of that case and it cannot be taken as a law laid down in all circumstances, where the departmental proceedings are initiated and simultaneously criminal proceedings have also been launched.

6. Even in the case of Kusheshwar Dubey vs. Bharat Coking Coal Ltd. (1988 (2) LLJ 470), while staying the disciplinary proceedings on the basis that the criminal action and disciplinary proceedings are grounded upon the same set of facts, the Supreme Court has clearly held that there cannot be a hard and fast rule or straight-jacket formula without having regard to the particularities of the individual situation, holding in the following words:

> "The view expressed in the three cases of this Court seems to support the position that while there could be no legal bar for simultaneous proceedings being taken, yet, there may be cases where it would be appropriate to defer disciplinary proceedings awaiting disposal of the criminal case. In the latter class of cases it would be open to the delinquent employee to seek such an order of stay or injunction from the Court. Whether in the facts and circumstances of a particular case there should or should not be such simultaneity of the proceedings would then receive judicial consideration and the Court will decide in the given circumstances of a particular case as to whether the disciplinary proceedings should be interdicted, pending criminal trial. As we

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> have already stated that it is neither possible nor advisable to evolve a hard and fast, straight-jacket formula valid for all cases and of general application without regard to the particularities of the individual situation. For the disposal of the present case, we do not think it is necessary to say anything more, particularly when we do not intend to lay down any general guideline.
> In the instant case, the criminal action and the disciplinary proceedings are grounded upon the same set of facts. We are of the view that the disciplinary proceedings should have been stayed and the High Court was not right in interfering with the Trial Court's order of injunction which had been affirmed in appeal. " (Emphasis supplied)

7. In a similar circumstance, the Supreme Court has held that stay of disciplinary proceedings till conclusion of criminal trial cannot be a matter of course. That was the judgement in State of Rajasthan vs. B.K. Meena and others (1996 (6) SCC 417 : 1997 (1) LLJ 746). The Supreme Court, after analysing all the judgements on this aspect, including the judgement rendered in 1988 (2) LLJ 470 (cited supra), has categorically held that the criminal proceedings and disciplinary proceedings are distinct and different in standard of proof, mode of enquiry, rules governing enquiry, etc., held in the following operative words.

> "14. ..... While it is not possible to enumerate the various factors, for and against the stay of disciplinary proceedings, we found it necessary to emphasise some of the important considerations in view of the fact that very often the disciplinary proceedings are being stayed for long periods pending criminal proceedings. Stay of disciplinary proceedings cannot be, and should not be, a matter of course. All the relevant factors, for and against, should be weighed and a decision taken keeping in view the various principles laid down in the decisions referred to above. "

The Supreme Court has further observed,

> "17. There is yet another reason. The approach and the objective in the criminal proceedings and the disciplinary proceedings, is altogether distinct and different. In the disciplinary proceedings, the question is whether the respondent is guilty of such

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conduct as would merit his removal from service or a lesser punishment, as the case may be, whereas in the criminal proceedings the question is whether the offences registered against him under the Prevention of Corruption Act (and the Indian Penal Code, if any) are established and, if established, what sentence should be imposed upon enquiry and trial in both the cases are entirely distinct and different. Staying of disciplinary proceedings pending criminal proceedings, to repeat, should not be a matter of course but a considered decision. Even if stayed at one stage, the decision may require reconsideration if the criminal case gets unduly delayed. "

8. Again, in a recent judgement in T.N.C.S. Corporation Ltd., and others vs. K. Meera Bai (2006 (2) SCC 255), the Apex court has clearly spelt out the dissimilarity between the criminal proceedings and the departmental enquiry, even while dealing with the situation of a delinquent officer acquitted in a criminal case, as to whether he was entitled to automatic reinstatement, based on the judgement of the Supreme Court in Capt.M. Paul Anthony vs. Bharat Gold Mines Ltd., (AIR 1999 SC 1416 : 1999 (3) SCC 679). The Supreme Court in the judgement rendered in Uttaranchal Road Transport Corporation and others vs. Mansaram Nainwal (2007 (1) Law Weekly 99), has clearly held that, on factual scenario, Paul Anthony's case (cited supra) is different, and the position in law relating to acquittal in criminal case and question of reinstatement has been dealt with in Union of India and another vs. Bihari Lal Sidhana (1997 (4) SCC 385), wherein it was held that after acquittal of a delinquent, there was no question of automatic reinstatement into the service and the factual aspects have to be taken into consideration. In view of the above said legal position, we hold that the judgement of the Division Bench rendered in 2006 (1) CTC 689 (cited supra) was only with reference to the peculiar facts and circumstances of the case as stated above and cannot be taken as a general law in all cases of concurrent disciplinary proceedings and criminal cases.

9. Even on the factual aspect of the present case, as we have narrated above, there is no peculiar circumstance to hold that the disciplinary proceedings should await till criminal case is completed. Moreover, it is clear from the enquiry report and the impugned show cause notice that the enquiry has been completed, in which the appellant himself has participated and disclosed his defence, and at this stage, there is no question of any protection in the criminal case, which is different and is in respect of the larger issue involved. In view of the same, the writ appeal stands dismissed and the order of the learned single Judge is confirmed. It is open to the appellant to submit his explanation to the impugned show cause notice within a period of two weeks from today.

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In the result, the writ appeal is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

kh

To

The Commandant
Tamil Nadu Special Police III Btln.
Veerapuram, Chennai 53.

1 cc to Government Pleader, Sr. 40494
1 cc to Mr.R. Sampath Kumar, Advocate, Sr. 40316

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